

May 2, 2013

To all whose presents may come, Greetings!

This filing is in response to the request for public comments regarding indecency on broadcast television (and, where appropriate, to radio). The following comments – as well as questions on what the exact terms of the policy are going to be - are hereby submitted.

Where “broadcaster” or “broadcasters” is used in this response, I am referring to over-the-air broadcast on regular television stations.

1. The Commission should continue the policy of the “Safe Harbor” provisions for broadcasters in that there will be no investigation of complaints for alleged indecency broadcast during the hours of 10pm-6am as underaged persons are presumed not present or unlikely to be present.
2. The safe harbor for broadcasters should be enlarged to 7am for programs which started before 7am and are not of the character which are usually viewed by children.
3. Live broadcasts of immediate events which would be categorized as news, newscasts, and similar such broadcasts should also be exempt for inadvertent or fleeting expletives.
4. Live broadcast coverage of official proceedings such as court cases, public hearings, and similar events should be completely exempt even for intentional expletives or content which may be indecent for the content of the proceedings. (The broadcaster could still be held liable for any misconduct of their own employees if the commission so chooses to impose that as a requirement).
5. Whatever standard the Commission uses for any other times, that the commission define exactly what the requirements are as to what constitutes a violation in terms of usage, whether any indecent remarks are punishable, only repeated or flagrant regular use, or what the standard is.
6. Whatever standard the Commission uses as far as what constitutes indecency, the Commission make clear exactly what is indecency. For example, does it only mean explicit references to sexual or excretory functions or output, does it include slang names used to refer to the genitals (see item #9, below), to innuendo which refers to such areas or actions, or what is, in general, “indecent.” This is also important because whatever standard the commission uses is going to be subject to legal challenge both on 1st Amendment and vagueness grounds if it's not clear what is prohibited.
7. Innuendo. Does indecent include “innuendo”? (The definition of “innuendo” includes “A derogatory hint or reference to a person or thing. An implication or insinuation.”) See also #9 below. Do the rules apply to innuendo (see the example in item #9) or does “indecent” only mean phrases including the common sexual or excretory terms? If “indecent” includes “innuendo” does the standard apply to unintentional innuendo or only where innuendo is used intentionally? Where innuendo and words or phrases not necessarily clearly obvious as indecent

or which can be read as indecent or not, the Commission must make clear how it will make a determination as to whether something is indecent. Does “indecent” always include “salacious”? (The definition of “salacious” includes “[Promoting sexual desire](#) or [lust](#)” and “[lascivious](#), [bawdy](#), [obscene](#), [lewd](#)”. For the purposes of this response I exclude that which is obscene since the Commission has already said that obscene material is not “indecent”, obscene material is already flat-out absolutely prohibited.) Or does “indecent” only include salacious material or by definition must something which is salacious be indecent? Can something be “indecent” without being salacious? Can something be salacious and not be “indecent”?

8. The Commission should make clear whether it will act *sua sponte* on incidents on a broadcast station where the incident is believed to be indecent (such as a Commission employee starting a proceeding for indecency for something they themselves heard or saw on a station irregardless of whether they are offended, and without a member of the public actually filing a complaint) or only in response to complaints of alleged indecent material from the public? Are Commission employees considered able to file complaints about indecency same as members of the public? (A similar issue is provided for the United State Patent and Trademark Office: an employee of the PTO may become the owner a patent issued to someone else by gift, assignment or purchase, but PTO employees cannot file applications for patents for things they themselves invent).
9. Provide guidance on how to consider material which may be considered indecent depending on meaning if the words used in and of themselves may not necessarily be considered to have excretory or sexual functions in and of themselves, e.g. if some woman was on a show, and she said, “I have a sopping wet pussy,” does this mean her cat has gotten soaked with water or does she mean her vagina is sexually excited? And does the latter represent indecency since the last word in that sentence has dual use?
10. If innuendo can be considered indecent, must the innuendo be clear and obvious? Would it include something not explicit, e.g. the lyrics from Rod Stewart's “Tonight's the Night”, especially the last sentence:

'Cmon Angel, my heart's on fire
Don't deny, you're man's desire
You'd be a fool, to stop this time
Spread your wings and let me come inside.
11. Intentional use of words or names that are identical to or have pronunciations in which part of the word is the same as a word which is normally considered objectionable. The breed of dog, “shitzu”, the Japanese family name “Takshita,” etc. It's real easy to use these as substitutes for the actual offensive word, sometimes as a comedic way to “get stuff past the radar.”
12. Terms in foreign languages that are exactly the same as terms in English which are considered offensive but in the context is non-sexual, e.g. the name of a particular city in Europe,

“Fucking, Austria.” (This is an actual name of a city in that country.)

13. What is the status of indecent material used in a language other than English on a station which normally broadcasts in that language? Do the indecency rules apply to English-only material or to material in any language? (E.g. the Yiddish word “schmuck” means “penis”).
14. Does “indecent” only mean use of the common vulgar terms or does it include other euphemisms, e.g. clearly “cunt” is a vulgarism for the vagina but does “pussy” (as used in #9) also apply? What about unusual euphemisms which still mean the same thing as the sexual organs (“cootchie snorter” for vagina)?
15. How does the standard apply to words which can be used in a sexual connotation (“dick” used to refer to the penis) and where the same word has other meanings (“dick” used to insult someone; the name of the comic-book and cartoon character Dick Tracy; former vice president Dick Cheney)?
16. Do the terms on indecency apply to non-sexual insults like “That guy is a real dick,” where the context clearly is not calling the person a penis or referring to his penis, but means something else (he’s an irritating or offensive person)?
17. Use of other phrases like “that sucks” that may be somewhat vulgar but are becoming common or are not considered sexually-related in the context used?
18. What is the status of indecent material used in a language other than English on a station which normally does not broadcast in that language?
19. What is the status of material carried from a foreign-source where the original material (which can be heard) contains material which may be indecent in that language but the translation, either as voice-over or as a translation shown on screen, changes the material to a non-indecent form?
20. What is the status of material carried from a foreign-source where the original material (which can be heard) contains material which may be indecent in that language but is not considered indecent in English?
21. What is the status of material carried from a foreign-source where the original material (which can be heard) contains material which is not considered indecent in that language but may be considered indecent in English?
22. What is the status where one form of the material is non-indecent (like the audio) but another form shown at the same time but might not necessarily be perceived by all of the audience (like the closed captioning) could be considered indecent?

23. Does “indecent” material include visual acts, to spoken terms only, to writing, to only some of these, or to all of them? What does “indecent” apply to? The audio? Actions and acts? Closed Captioning? Written material seen on the program (e.g. on-screen quotes from the text of a book like D.A.F. DeSade's *Philosophy in a Bedroom*)?
24. What is the status of material which may be considered indecent because it is a visual signal (extending the third finger of the hand, or grabbing a bent arm and extending a fist) but doesn't involve visual exposure of the genitals or that region of the body or the anus? Or a movement which may be signaling a sexual act (cupping the hand and moving the arm up and down as a visual euphemism or the equivalent for masturbation or masturbating someone else)?
25. What is the status as to an act which might be indecent but cannot be seen (a shadow of two people apparently having sex)?
26. What is the status as to an act which might be indecent but is hidden (someone masturbating or apparently masturbating on camera but in a way not visible such as with their back to the camera)?
27. Does “indecent” include sound effects? Examples include
 - (a) the sound of some woman (or man) seductively moaning or making what may be considered sounds that she's having a sexual experience;
 - (b) sounds of a person or couple having sexual intercourse, which involves dialog other than the obvious use of the common sexual or excretory terms;
 - (c) sounds similar to (b) but using either the clinical words for sexually-related body parts (“penis”, “vagina”, etc.) or the buttocks;
 - (d) sounds similar to (b) where commonly-used euphemisms for the sex organs or the buttocks are used;
 - (e) sounds similar to (b) where euphemisms which themselves are not in and of themselves normally substituted for these body parts
 - (f) sounds which can reasonably be believed to be related but have no dialog (sounds of a bed rhythmically squeaking as if the people on it are involved in having sex).
28. If fleeting use of words which have both a sexual connotation and can be used non-sexually can be considered subject to censure, what the standard is to be, e.g. Bono's comment on an awards show “This is fucking beautiful,” or words to that effect.
29. Do broadcasters always have to use a tape delay on non-exempt material carried live and in what circumstances are they permitted not to use a delay and not expect liability?
30. Federal law permits a broadcaster to accept or reject commercials from political candidates for federal office for any election cycle and may reject broadcast of them as long as they reject all such commercials for candidates for federal office. Once a broadcaster accepts any commercial by a candidate for federal office they are required to broadcast all commercials from any other

candidate for that office in that election on the same terms and pricing as they did for the first candidate (“mandatory coverage”). Will broadcasters retain absolute immunity for indecent materials carried in a commercial for a political candidate for federal office where the candidate is not the first to run an ad, and is entitled to invoke mandatory carriage?

31. Does the current immunity for any content in a commercial from a candidate for federal office apply only to mandatory carriage commercials, e.g. to commercials run by candidates other than the first such candidate, where the broadcaster is, by law, required to accept commercials from others (but receives common-carrier immunity for content)? Does the immunity to the broadcaster for content in a commercial by a candidate for federal office also apply to the first commercial or subsequent commercials from a candidate for federal office where the broadcaster may accept or reject the commercial?
32. Will the immunity for any content in a commercial from a candidate for federal office be extended to commercials for a candidate for a state or local office, or is the broadcaster liable for the content (if indecent) in such a case?
33. If a commercial carried on a station contains material that may be indecent, is liability such as fines imposed by the FCC attach to the broadcaster only, to the advertiser, to the agency supplying it to the broadcaster, or to more than one of these? If it is other than the broadcaster, upon whom can it be imposed? If penalties may be imposed on more than one party, is the liability “joint and several,” e.g. a fine is imposed and one or more of them have to pay it and if they do not the commission will try and demand or collect the fine (or go to court to do so if necessary) against whomever it can find, or is it imposed as some amounts to some party or parties and some amounts to others? Who is liable for FCC sanctions for allegedly indecent material in an “infomercial,” where an advertiser purchase a block of time and something is shown live or recorded? Is the broadcaster exclusively liable or do other parties also carry liability as well? If the broadcaster disables the broadcast where material which might be indecent, if they are considered liable, are they still liable after attempting to stop further potentially alleged indecent material?
34. Does the Commission currently consider that it has the authority to impose indecency restrictions or penalties on non-broadcast content such as satellite, cable channels, or to Internet-only transmissions? If a broadcast is also carried over the Internet (or over satellite or cable) is only the portion broadcast over-the-air subject to the restrictions on indecency or are the non-broadcast portions subject? If the Commission does have authority to impose indecency rules on non-broadcast transmissions, is it considering that the standards for broadcasters can or should be also applied to non-broadcast transmissions (satellite, cable, Internet) by wire or radio?

Before the Federal Communications Commission
In the matter of Proceeding 13-86
Filing by Viridian Development Corporation

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35. Do the rules on indecent material apply to broadcasters transmitting encrypted material over-the-air that cannot be perceived by the general public without specialized equipment and/or a subscription?

Respectfully submitted,
Paul Robinson
General Manager
Viridian Development Corporation

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